

1           EXAMINER ALBERS: Okay. Returning to the  
2 public portion of the transcript, at this time  
3 Ms. Norrington indicated she has no further  
4 questions for CILCO's witnesses, so we'll turn to  
5 Staff counsel.

6           MS. VON QUALEN: I have a few questions.

7                           CROSS EXAMINATION

8           BY MS. VON QUALEN:

9           Q. Referring to CILCO Supplemental Exhibit  
10 10.2, Mr. Davidson, you're familiar with that  
11 exhibit?

12          A. (Mr. Davidson) Yes.

13          Q. Turning to what is marked as page 5 on  
14 my copy of the exhibit, Freeman United Coal Mining  
15 Company, Crown II Mine, Calculation of Under /Over  
16 Billing for the Year 2000, do you agree that line  
17 number 10 reflects the amount that was underbilled  
18 in 1999?

19          A. (Mr. Davidson) That's what they're  
20 showing as underbilled.

21          Q. According to this exhibit.

22          A. (Mr. Davidson) Right.

1           Q.     That is the amount that was underbilled  
2     in 1999.

3           A.     (Mr. Davidson) Correct.

4           Q.     Do you at this time have any reason to  
5     doubt that number?

6           A.     (Mr. Davidson) No, I don't.

7           Q.     And referring to line 13, do you agree  
8     that that reflects the amount that was overbilled  
9     in the year 2000?

10          A.     (Mr. Davidson) No, I don't.

11          Q.     What does that line reflect?

12          A.     (Mr. Davidson) Well, that line includes  
13     arbitration settlements for prior periods '94  
14     through '97 actually including in the 2000  
15     over/under.

16          Q.     So do you agree that line 13 reflects  
17     the amount that was overbilled in 2000 plus some  
18     additional amounts?

19          A.     (Mr. Davidson) Right, awards from prior  
20     periods.

21          Q.     Are you aware of what amounts were  
22     awarded in the arbitration proceeding?

1           A.       (Mr. Davidson) No, I'm not.

2           Q.       Mr. Livingstone, are you aware of the  
3       amount that was awarded in the arbitration  
4       proceeding?

5           A.       (Mr. Livingstone) No, I'm not.

6           MS. VON QUALEN: Your Honor, at this time I'd  
7       like to make an on-the-record data request that  
8       that amount be provided to Staff.

9           MR. SEIDEL: Perhaps I can clarify, and the  
10       witnesses may be able to answer if I direct their  
11       attention to lines in the exhibit that would help  
12       you, and specifically, on Exhibit B, lines 5 and 6  
13       refer to JAMS /Endispute Damage Award and line 6  
14       refers to Professional Fees Expensed for Fourth  
15       Quarter 1997.

16          MS. VON QUALEN: So --

17          MR. SEIDEL: I'm sorry. Line 7 also refers to  
18       PCF Corrected for Fourth Quarter 1993 - Fourth  
19       Quarter 1999 for Fees and Awards.

20          MS. VON QUALEN: Okay.

21          Q.       Now if either of your memories are  
22       refreshed, do either one of you know how much the

1 arbitration award was?

2 A. (Mr. Davidson) I have not seen anything  
3 that gives the numbers.

4 A. (Mr. Livingstone) Assuming that this  
5 information and dollar figure is correct, which I  
6 have no independent verification of it, but.

7 Q. When you say this, what are you  
8 referring to?

9 A. (Mr. Livingstone) I'm sorry. The lines  
10 that Mr. Seidel referred to.

11 Q. That would be lines --

12 A. (Mr. Livingstone) 5 and 6 and 7.

13 Q. Then would line 13 contain the same  
14 items as lines 5, 6, and 7?

15 A. (Mr. Davidson) They're in that total on  
16 this worksheet.

17 Q. So, Mr. Davidson, is it your testimony  
18 that the amount over/ or underbilled, which is  
19 reflected in line 13, includes the amounts  
20 reflected in line 5, line 6, and line 7?

21 A. (Mr. Davidson) Yes.

22 Q. Mr. Livingstone, looking at Exhibit

1 10.1, on my copy it's on the last page, the area  
2 which is entitled Short Term Retail Area #1.

3 EXAMINER ALBERS: Ms. Von Qualen, what's at  
4 the bottom of that page?

5 MS. VON QUALEN: It's Exhibit - Base Case 99  
6 Method Only.

7 EXAMINER ALBERS: Okay. Thank you.

8 A. (Mr. Livingstone) I'm there. Sorry.

9 Q. There are three lines under that, MWs,  
10 Market Price, and Dollars. Do you see that?

11 A. (Mr. Livingstone) I'm sorry. I lost my  
12 place here.

13 Q. I believe it's the final page of your  
14 exhibit.

15 A. (Mr. Livingstone) Okay.

16 MR. SEIDEL: This was a confidential exhibit.

17 MS. VON QUALEN: I'm not going to ask for  
18 numbers.

19 EXAMINER ALBERS: Okay.

20 Q. Did you find that?

21 A. (Mr. Livingstone) Yes. I'm sorry. Yes.

22 Q. Are the market prices there the same as

1 the market prices for electric power used elsewhere  
2 in this same exhibit?

3 A. (Mr. Livingstone) No, I'm afraid they  
4 are not.

5 Q. Are the data on the lines labeled Market  
6 Price and Dollars used anywhere else in CILCO  
7 Supplemental 10.1?

8 A. (Mr. Livingstone) I'm sorry. The dollar  
9 --

10 Q. The data on the lines labeled Market  
11 Price and Dollars, are they used anywhere else in  
12 10.1?

13 A. (Mr. Livingstone) They are totaled up to  
14 give the -- I'm sorry. You referred specifically  
15 to the Market Price and the Dollars?

16 Q. Yes.

17 A. (Mr. Livingstone) No, they are not.

18 MS. VON QUALEN: That's all the questions I  
19 have.

20 EXAMINER ALBERS: Okay.

21 Mr. Davidson, these next few questions  
22 are for you.

1 EXAMINATION

2 BY EXAMINER ALBERS:

3 Q. Do you have a copy of Exhibit 7.1 handy?

4 A. (Mr. Davidson) Yes, I do.

5 Q. On the left-hand column about halfway  
6 down there's an entry entitled Quarterly  
7 Adjustment.

8 A. (Mr. Davidson) Okay.

9 Q. Just so I'm clear, can you tell me what  
10 the purpose of that quarterly adjustment is?

11 A. (Mr. Davidson) It's used, I believe from  
12 this sheet here, to keep the price at \$43 a  
13 quarter. Basically they determine that the price  
14 for the year would be \$43, and this is their way of  
15 keeping it at the \$43 for each quarter.

16 Q. Okay. Now I'm going to try to do this  
17 without identifying any numbers.

18 In the very last row on that page it's  
19 entitled Estimated Contract Production Costs. Do  
20 you see that?

21 A. (Mr. Davidson) Okay.

22 Q. Now that seems relatively constant

1 throughout the year. Would you agree?

2 A. (Mr. Davidson) Yes.

3 Q. Could you explain why the buyer's cost  
4 per ton further up on the page decreases in the  
5 first quarter throughout the year -- from the first  
6 quarter throughout the year?

7 A. (Mr. Davidson) It's because that's done  
8 on a quarterly basis, so it's taking the quarterly  
9 costs by the quartering tons and coming up with a  
10 price. They may not be incurring the actual costs  
11 on a consistent basis in each quarter, and that's  
12 why the buyer's cost is changing.

13 Q. Okay. I'm trying to find something in  
14 my notes to match up here on the exhibit.

15 Okay. Let me refer you to the entry on  
16 the left column labeled Prior Quarter Over /Under  
17 Billing. Do you see that?

18 A. (Mr. Davidson) Yes.

19 Q. Can you explain why in the first quarter  
20 of 2000 that that prior quarter overbilling -- why  
21 it was the cost that it's labeled here, given what  
22 the cost of production at the bottom of the page



1 represented is?

2 A. (Mr. Davidson) The calculation is down  
3 there at the bottom where they're coming up with,  
4 and it's done on a quarterly tonnage, and the  
5 quarterly tons change, again, because the costs are  
6 coming in on a different cost per ton basis each  
7 quarter. That's creating the variances.

8 Q. So you're saying it's not tied to an  
9 effort to keep the prices constant throughout the  
10 year?

11 A. (Mr. Davidson) Well, that's what the  
12 quarterly adjustment is doing.

13 Q. Okay. So it is tied to that.

14 A. (Mr. Davidson) Yes.

15 Q. Okay. Okay.

16 Is it correct that regardless of what  
17 values are used on Exhibit 7.1, that it will be  
18 necessary to add taxes?

19 A. (Mr. Davidson) That's correct.

20 Q. And do you know what the appropriate tax  
21 rate is?

22 A. (Mr. Davidson) It's 6.25 percent.

1           Q.     Now in the bottom quarter of the page in  
2     the left-hand column there's a, for lack of a  
3     better word, a title for a portion of this that's  
4     called Prior Quarter Adjustment that's underlined.

5           A.     (Mr. Davidson) Okay.

6           Q.     Do you see that?

7           A.     (Mr. Davidson) Yes.

8           Q.     Now that section appears to develop the  
9     individual prior quarter's adjustment. Is that  
10    correct?

11          A.     (Mr. Davidson) Yes.

12          Q.     Okay. Now moving down, the sixth row,  
13    right after Credit Adjustment there's a blank space  
14    and then a row of four numbers. How would you  
15    characterize the values in that row? Do you see  
16    what I'm referring to?

17          A.     (Mr. Davidson) Yes. I'm just trying to  
18    refresh my memory where some of these numbers are  
19    coming from that are above it.

20          Q.     Okay. That's fine.

21                 Maybe this will help. Is it really a  
22    summation?

1           A.     (Mr. Davidson) It's adding the numbers  
2     above it.

3           Q.     Okay. That's what I wanted to be clear  
4     on.

5                     In the very following row that's labeled  
6     as Adjustments, what type of adjustments is this  
7     suppose to reflect?

8           A.     (Mr. Davidson) I have no idea.

9           Q.     Okay.

10                    And now I'm going to refer to the  
11     supplemental rebuttal testimony that was offered.  
12     I'll try not to use numbers.

13                    Looking at page 4, line 59, about a  
14     third of the way in on that line it says,  
15     "Mr. Larson also ignores that the" and then there's  
16     a number. Do you see that?

17           A.     (Mr. Davidson) Yes.

18           Q.     Do you agree that that's the number that  
19     CILCO projects as a price per ton in 2000 from the  
20     Crown II mine?

21           A.     (Mr. Davidson) That was what was used in  
22     the filing for the year 2001. Oh, I'm sorry. The

1 cost on line 60 is what I was referring to.

2 Q. Okay. If I understand this correctly,  
3 CILCO believes that number represents the cost per  
4 ton in the year 2001.

5 A. (Mr. Davidson) Right.

6 Q. Okay. Yet, and I don't have a cite for  
7 this, unfortunately, basically for the year 2000  
8 CILCO believes that a price per ton is \$3 higher.  
9 Correct?

10 A. (Mr. Davidson) Correct.

11 Q. So essentially you're saying from the  
12 last quarter of 2000 to the first quarter of 2001,  
13 the price should reduce by \$3.

14 A. (Mr. Davidson) That was what was  
15 projected, yes.

16 EXAMINER ALBERS: Okay. That was it. Thank  
17 you.

18 Do you have any redirect?

19 MR. SEIDEL: I do have some redirect. There  
20 was one question that Mr. Livingstone answered that  
21 I didn't quite understand, and I wanted to see if I  
22 needed to redirect on that, so if I could have just

1 a minute to talk to the witness.

2 EXAMINER ALBERS: Sure.

3 (Whereupon an  
4 off-the-record period  
5 transpired.)

6 MR. SEIDEL: Okay. May I proceed?

7 EXAMINER ALBERS: Yes.

8 MR. SEIDEL: Thank you.

9 REDIRECT EXAMINATION

10 BY MR. SEIDEL:

11 Q. Mr. Livingston, I believe Mr. Fitzhenry  
12 asked you some questions regarding the adjustments  
13 to the base case which you prepared, and  
14 specifically you were focusing on question and  
15 answer 4 of Supplemental Exhibit 10.0, lines 23  
16 through 25, and I think you indicated that other  
17 than the adjustment described there, no other  
18 adjustments were made. Didn't you also make an  
19 adjustment to reflect the five-year -- the effect  
20 of the termination of the CIPS contract after three  
21 years and the effect that would have over the five -  
22 year period?

1           A.     (Mr. Livingstone) Yes. I adjusted that  
2     out back to the original price of \$24.

3           Q.     With respect to the changes you made in  
4     Exhibit 10.2 to incorporate the effect of --  
5     pursuant to the Examiner's direction of the  
6     termination of the Freeman contract, are the bases  
7     for the changes stated in your testimony?

8           MR. FITZHENRY: Excuse me. I believe you  
9     meant to say 10.1 Revised? 10.2 is the --

10          MR. SEIDEL: Yes, that's correct, 10.1  
11     Revised.

12          MR. FITZHENRY: Okay.

13          A.     (Mr. Livingstone) Let me double-check.  
14     I believe they are. I'm sorry. You specifically  
15     asked?

16          Q.     Are the bases for the changes that you  
17     made, pursuant to the Examiner's direction in  
18     Exhibit 10.1 Revised to reflect the effect of the  
19     termination of the Freeman contract, stated in your  
20     testimony at page 5?

21          A.     (Mr. Livingstone) Yes, they are.

22          Q.     Mr. Davidson, referring you to what has

1     been marked as CILCO Exhibit 10.2, and I guess this  
2     would be a confidential subject.

3             EXAMINER ALBERS:   Okay.   Do you have any other  
4     public questions?

5             MR. SEIDEL:   I just wrote mine down in order,  
6     and I don't know for sure.   I guess I can hold this  
7     till the end.

8             EXAMINER ALBERS:   I was just going to ask you  
9     to lump all your proprietary ones together.

10            MR. SEIDEL:   Let me hold this one till the  
11    end.

12            EXAMINER ALBERS:   Okay.

13            MR. SEIDEL:

14            Q.     Mr. Livingstone, I believe someone asked  
15    you who was in charge at CILCO, and you testified  
16    about an individual by the name of Mr. Stinson.  
17    Would you like to update your testimony in that  
18    regard?

19            A.     (Mr. Livingstone) Yes, I would.  
20    Mr. Stinson has been replaced by Lenny Lee.   I  
21    believe it was effective the end of -- I think it  
22    was the end of January or thereabouts.

1 Q. Of 2001?

2 A. (Mr. Livingstone) Of 2001, yes.

3 MR. KELTER: Could you spell that for the  
4 record, please? I couldn't understand the name, if  
5 it was Lee or Glee.

6 A. (Mr. Livingstone) Lee. I would have to  
7 check the spelling. I believe it's L-E-E, but I  
8 would have to double-check to verify that.

9 MR. SEIDEL: I'm informed that it's L-E-E.

10 Q. Let me ask you this question. Who was  
11 asked the question by the attorney for the Citizens  
12 Utility Board regarding the example of the 10  
13 kilowatts at 10 cents? That was you,  
14 Mr. Livingston?

15 A. (Mr. Livingstone) Yes. I'm sorry.

16 MS. NORRINGTON: It was 2 cents.

17 MR. SEIDEL: I'm going to restate it. I just  
18 wanted to...

19 Q. In the example, if the charge per  
20 kilowatt-hour for the regulated customers or the  
21 cost per kilowatt-hour for the regulated customers  
22 was 6 cents and the cost per kilowatt-hour for



1     unregulated customers was 2 cents, would the  
2     average cost, combining the two 10 kilowatt -hour  
3     usages, be 8 cents again?

4           A.     (Mr. Livingstone) Four cents.

5           Q.     Four cents. What did I say?

6           A.     Eight.

7           Q.     I stand corrected. Would that be 4  
8     cents?

9           A.     (Mr. Livingstone) Yes, it would.

10          Q.     In that instance, the average cost per  
11     kilowatt-hour would be lower than the cost per  
12     kilowatt-hour for the regulated customer.

13          A.     (Mr. Livingstone) Correct, it would.

14          MR. SEIDEL: I think the remainder of my  
15     questions are confidential.

16          EXAMINER ALBERS: Okay. We will go in camera.

17                   (Whereupon the following  
18                   pages 503 through  
19                   513 are contained under  
20                   separate cover for the in  
21                   camera portion of the  
22                   proceedings.)